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**Datasheet for the decision
of 23 January 2007**

Case Number: T 1572/05 - 3.2.01

Application Number: 96203542.4

Publication Number: 0779176

IPC: B60N 2/36

Language of the proceedings: EN

Title of invention:

Vehicle rear seat

Patentee:

Snoeks Automotive B.V.

Opponents:

BV PRODUCTIONS

ABK Kunststoffen B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty (yes)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 1572/05 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 23 January 2007

Appellant I: BV PRODUCTIONS
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 20 October 2005
rejecting the opposition filed against European
patent No. 0779176 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. Crane
Members: J. Osborne
S. Hoffmann

Summary of Facts and Submissions

- I. The opponents' appeals are directed against the decision posted 20 October 2005 to reject the oppositions against European patent No. 0 779 176.
- II. With a letter received 19 December 2005 opponent I filed notice of appeal and paid the due fee. No statement of grounds was filed within the time limit provided by Article 108 EPC in conjunction with Rule 78(2) EPC. By a communication dated 22 March 2006, sent by registered post with acknowledgement of receipt, the Registry of the Board informed the appellant that it appeared that no written statement of grounds of appeal had been filed and that it was to be expected that the appeal would be rejected as inadmissible. The appellant was invited to file observations within two months. No observations were received in response to that communication either within the set time limit or within the three months after expiry of the time limit provided by Rule 84a EPC.
- III. With a letter received 15 December 2005 opponent II filed notice of appeal and paid the due fee. A written statement of grounds of appeal was filed on 17 February 2006.
- IV. The following state of the art played a role during the appeal procedure:
- D0: a prior-used van acknowledged in the patent specification column 1, lines 8 to 32

D5: DE-A-2 941 235

D24: DE-A-3 921 996

D27: EP-A-0 447 364.

- V. Oral proceedings were held on 23 January 2007. Appellant I (opponent I) did not attend. Appellant II (opponent II) requested that the decision under appeal be set aside and that the patent be revoked. The respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of a main request or a first auxiliary request, both filed during the oral proceedings.
- VI. Claim 1 according to the main request reads as follows:
- "A van (1) of the type provided with a cargo space, which comprises at least one seat or assembly (2) of seats (3,4,5) provided with a backrest not capable of being folded down, as well as a safety belt (6,7,8) integrated in and attached to said backrest, near the upper edge thereof, characterized in that at least one rigid pulling arm (12) is provided, which is attached on the one hand to the upper edge of the backrest and on the other hand to a post (11) formed by the C-pillar of said van (1) and/or to a floor portion of the van (1), at a point located behind said backrest, which pulling arm (12) is capable of absorbing pulling forces exerted on the safety belt (6,7,8) in case of a calamity, wherein said seat or assembly (2) of seats (3,4,5) is a back seat or assembly of back seats."

Claim 1 according to the first auxiliary request differs from that of the main request by the additional feature that the rigid pulling arm has fixed dimensions.

VII. The submissions of appellant II as regards novelty may be summarised as follows:

Certain terms of the claim require interpretation. The feature of 'cargo space' does not distinguish the 'van' from a normal station wagon. The rear compartment of such a vehicle typically would be used to transport luggage to an airport which then would be loaded into the cargo space of an aircraft. It should also be noted that claim 1 specifies that the backrest is not capable of being folded down; this fails to exclude a backrest which may be adjustable for rake. The specification of the pulling arm as 'rigid' is to be interpreted as describing its behaviour when under tension and merely excludes deformation when under tension. The claim relates to a belt installation for a back seat and the attachment of the rigid arm to a C-post is a direct equivalent of attaching it to the B-post for a front seat.

Taking account of these interpretations it can be seen that the subject-matter of claim 1 according to the main request is not new with respect to the disclosure of D27. This relates to a non-foldable seat for a truck for which vertical and fore/aft adjustment is accommodated by a belt and a retractor mounted to the floor. It can be seen from figure 2 that the seat occupant is not a driver. It follows that the seat may be a rear seat and the belt attachment may be to a C-post.

VIII. The respondent countered the arguments regarding novelty essentially as follows:

The seat in D27 is retained not by a rigid pulling arm but by a belt. Moreover, it is a front seat which is connected to the B-post and there is no disclosure of a cargo space.

IX. The submissions of appellant II in respect of inventive step of the subject-matter of claims 1 according to both requests in as far as they are relevant to the present decision were essentially as follows:

As regards the main request the closest state of the art may be seen as that designated as D0 which is acknowledged as comprising at least the features of the preamble of claim 1. The novel features of the claim are essentially known from D24 which addresses the same problem as the patent and in the same technical field. The solution according to D24 is to connect the seat to the B-post by a rigid arm which accommodates adjustment of the seat. The skilled person would recognise that if such adjustment is not provided it need not be accommodated by the arm which therefore may be simplified accordingly. The fact that D24 connects to the B-post is of no significance; since the problem when beginning from D0 relates to the back seats the skilled person would simply provide a connection to the C-post.

The additional feature according to the first auxiliary request is already known from D24. Although the effective length of the arm of D24 may vary, present

claim 1 refers not to an effective length but to the actual length. Moreover, if no positional adjustment of the seat were required, the variation in the effective length of the arm would be superfluous.

- X. The respondent countered the arguments in respect of inventive step essentially as follows:

The closest state of the art is that designated as D0. The problem solved is to avoid the need for cushions to protect the rear seat passengers during a collision. This is a special problem which occurs only with double cabin vans and the solution provides for retention of the entire seat together with up to three occupants. Although paragraph [0007] of the patent specification refers to firm anchorage of the seat to the floor this is not sufficient to ensure retention without additional strengthening of the floor. D24, on the other hand, relates to a front seat which is firmly anchored to the floor and remains so during a collision so that the problem which is addressed is a different one concerning only the strength of the seat backrest. As a result, the arm according to D24 is intended to handle only the load imparted by the upper belt anchorage and not the much higher loads necessary to restrain the entire seat, as in the present invention. The skilled person wishing to solve the present problem therefore would not consider the teaching of D24. However, even if he were to do so the teaching is to attach a front seat to a B-post by means of a movable arm so he would not become aware of the present solution. The common sense approach to solving the present problem would be to mount the seat more firmly to the floor. With the restraint according to the

present invention such a mounting is preferable but not necessary.

As regards the first auxiliary request and the additional feature of the fixed length of pulling arm, D24 discloses a pulling arm which has an effective length which varies to accommodate adjustment of the seat. The presently claimed fixed length has the advantage that a range of simple arms may be provided for each model.

Reasons for the Decision

Admissibility of the appeals

1. No written statement setting out the grounds of appeal has been filed by opponent I. Furthermore, the notice of appeal contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC. The appeal of opponent I therefore has to be rejected as inadmissible (Rule 65(1) EPC). Opponent I continues to be a party to the procedure as of right and was duly summoned to the oral proceedings but has played no active role beyond filing the notice of appeal.
2. The appeal of opponent II (hereafter "appellant") complies with Articles 106 to 108 and Rules 1(1) and 64 EPC. The appeal therefore is admissible.

Substantive matters

3. The patent relates to a van having two rows of seats ('double cabin') and a cargo space. It is implicit that the van includes a rear side door for access to the rear seats and an associated C-post. The respondent explains that whilst the legal provisions relating to the provision of front seats and seat belts in such vehicles are generally harmonised, those relating to a second row of seats are not. As a result, the manufacturers of the vans provide only the front seats and some vans are then converted to double cabin vans having additional, rear seats in accordance with the market for which they are intended. Since the floor portion to which the rear seats are fitted is not originally intended for mounting of the seats and safety belts it comprises no strengthening. It has been the practice when installing these rear seats to integrate the safety belts into the seat, the outer seats being equipped with three-point safety belts having the upper anchorage attached to the backrest. During a collision the occupants then are restrained to the seat but since that is mounted to an un-strengthened floor it may break away. According to the patent specification it has been required to provide cushioning behind the front seats for "stopping" the rear seat occupants in such a situation. The patent aims to obviate the need for the cushioning by providing "at least one rigid pulling arm ... attached on the one hand to the upper edge of the backrest and on the other hand to a post formed by the C-pillar".

Main request

Novelty

4. D27 relates to a vehicle seat having an integrated three-point safety belt and which is movable relative to the vehicle frame. A seat tether comprises a further belt attached to the upper end of the seat backrest. The tether belt passes from the upper end of the seat backrest through a loop mounted at an adjacent point on the vehicle and then downwards to an emergency locking retractor mounted on the floor. The tether permits normally free movement of the seat relative to the vehicle but restricts forward movement during a frontal collision.

4.1 The appellant considers that D27 discloses all features of present claim 1. In the board's view there are a number of claimed features which are not disclosed, *inter alia* that the vehicle is a van having a back seat and that the belt is attached to the C-post. However, the feature which most clearly is not disclosed is that of a rigid pulling arm. The term "rigid" normally implies inflexibility and there is nothing in the patent specification which would indicate that another meaning is intended. The tether of D27, on the other hand, must be considered as being flexible by virtue of passing through the loop mounted to the vehicle. The appellant's argument that the only function required of the pulling arm is that it be rigid in tension fails to take account of the fact that the term "rigid" is not a functional but a constructional feature.

- 4.2 On the basis of the foregoing the board concludes that the subject-matter of claim 1 is new with respect to the disclosure of D27 (Article 54 EPC).

Inventive step

5. The board agrees with the parties that the closest state of the art is that designated as D0, a public prior use acknowledged in the patent specification (see 3 above). According to this the features of the preamble of present claim 1 together with the feature of the back seat are known.

- 5.1 The respondent argues that the problem to be solved is to restrain the entire back seat together with up to three occupants and that although it is desirable to mount the seat to the floor this is not necessary as the seat anyway will be restrained by the pulling arms. The board is not satisfied that this problem is solved by the features of present claim 1. In practice the seat would be mounted to the floor and the concept that it need not be is neither realistic nor reflected in the wording of the claim. Indeed, according to claims 2 and 3 the seat may be mounted on a frame which according to the patent specification column 2, lines 6 to 17 is designed so as to remain stable even during high speed collisions and whereby "the seat ... is anchored especially firmly to the floor". The only effect of the subject-matter as presently claimed is that the seat and its implicit attachment to the floor both are relieved of the duty of coping with the load applied to the upper belt anchorages. This is reflected in the statement in the specification that the object accomplished by the subject-matter of claim 1 is to

provide an efficient yet very safe vehicle, thereby avoiding the expense of needing to provide the cushion.

5.2 It belongs to the general technical knowledge of the skilled person that, in general, it is most efficient to react a load as closely as possible to the point of its application. This is reflected in a number of cited documents belonging to the state of the art within the same technical field. Each of D5, D24 and D27, for example, relates to a vehicle seat having an integrated upper seat belt anchorage and which has a connection between the upper edge of the backrest and an anchorage point on an adjacent part of the vehicle structure. Both D24 and D27 include reference to the expense otherwise incurred in reinforcing the seats. D27 also mentions avoiding the need to provide additional reinforcement to the vehicle floor. Both D24 and D27 deal more particularly with the problem of adapting the connection to accommodate movement between the seat backrest and the vehicle, be it vertical or fore/aft adjustment of the seat or adjustable inclination of the backrest. Whereas D27 employs a belt to connect the backrest to the vehicle structure, D24 is more relevant to the present case as it employs a rigid arm.

5.3 Various embodiments of D24 differ in the way they accommodate seat adjustment, in particular depending on the relative positions of the backrest and the adjacent vehicle structure. According to the embodiment of figure 1 a rigid pulling arm of fixed length is connected at one end to the upper edge of the backrest and at the other end is slidable and lockable in a horizontal track which is connected between the B-post and the vehicle structure rearward thereof. The

embodiment of figure 2 is similar but the track is mounted only to the B-post. In a further embodiment shown in figure 3 the arm is rotatably mounted to the B-post and the seat has a sliding connection to the arm.

5.4 The arrangement according to D24 is a relatively complex one because of the need to accommodate adjustment of the seat. Moreover, all embodiments relate to a front seat which therefore is adjacent the B-post. Nevertheless, the skilled person would recognise the basic teaching, to provide a connection between the upper edge of the backrest and the adjacent vehicle structure. The difference between front and rear seats would play no role provided that a suitable load bearing structure is available. Given that the skilled person when beginning from D0 is seeking to improve the arrangement of non-adjustable seats adjacent the C-post it would be obvious for him to follow the basic teaching and thereby provide a correspondingly non-adjustable connection between the C-post and the backrest and so arrive at the subject-matter of present claim 1 without applying inventive effort.

5.5 The respondent argues that the common sense solution to the set problem would be to reinforce the mountings of the seat to the floor. The board does not disagree with this view but notes that such a modification is not excluded by the present claim, cf. claims 2 and 3. Moreover, even if the skilled person were to improve the attachment of the seat to the floor the problem of reacting the load applied to the backrest by the upper belt would still exist, as in D24 and D27 which relate

primarily to front seats which therefore implicitly are firmly anchored to the floor.

- 5.6 Based on the foregoing the board concludes that the subject-matter of present claim 1 does not involve an inventive step (Article 56 EPC). The main request therefore must be refused.

Auxiliary request

6. The subject-matter of claim 1 according to this request differs from that of the main request by the additional feature that the rigid pulling arm has "fixed dimensions". This feature reinforces that of non-adjustability of the backrest and also excludes the accommodation of fore/aft adjustment of the seat as a whole. However, as already discussed in respect of the main request, it would be an obvious measure for the skilled person to simplify the arrangement according to D24 by deleting superfluous features such as provision for accommodating seat adjustment. According to D24 this is provided for by means of movable mountings whilst the pulling arm itself is of fixed dimensions. The additional feature according to this request therefore fails to add any inventive merit to the subject-matter of claim 1 and also this request must be refused.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

A. Vottner

S. Crane